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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 808-A

12 FERNANDO MARQUEZ RODRIGUEZ
11948 West Washington Blvd., Suite 101
13 Los Angeles, CA 90066

**FIRST AMENDED
ACCUSATION**

14 Land Surveyor License No. L 4170

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. David E. Brown (Complainant) brings this First Amended Accusation solely in
20 his official capacity as the Executive Officer of the Board for Professional Engineers and Land
21 Surveyors, Department of Consumer Affairs.

22 2. On or about August 8, 1973, the Board for Professional Engineers and Land
23 Surveyors (Board), Department of Consumer Affairs issued Land Surveyor License No. L 4170
24 to Fernando Marquez Rodriguez ("Respondent"). The Land Surveyor License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on June 30, 2010,
26 unless renewed.

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1 relating to land boundaries or property lines, if the field survey discloses any of the following:

2 “(1) Material evidence or physical change, which in whole or in part does not appear
3 on any subdivision map, official map, or record of survey previously recorded or properly filed in
4 the office of the county recorder or county surveying department, or map or survey record
5 maintained by the Bureau of Land Management of the United States.

6 “(2) A material discrepancy with the information contained in any subdivision map,
7 official map, or record of survey previously recorded or filed in the office of the county recorder
8 or the county surveying department, or any map or survey record maintained by the Bureau of
9 Land Management of the United States. For purposes of this subdivision, a "material
10 discrepancy" is limited to a material discrepancy in the position of points or lines, or in
11 dimensions.

12 “(3) Evidence that, by reasonable analysis, might result in materially alternate
13 positions of lines or points, shown on any subdivision map, official map, or record of survey
14 previously recorded or filed in the office of the county recorder or the county surveying
15 department, or any map or survey record maintained by the Bureau of Land Management of the
16 United States.

17 “(4) The establishment of one or more points or lines not shown on any subdivision
18 map, official map, or record of survey, the positions of which are not ascertainable from an
19 inspection of the subdivision map, official map, or record of survey.

20 “(5) The points or lines set during the performance of a field survey of any parcel
21 described in any deed or other instrument of title recorded in the county recorder's office are not
22 shown on any subdivision map, official map, or record of survey.

23 “(c) The record of survey required to be filed pursuant to this section shall be filed
24 within 90 days after the setting of boundary monuments during the performance of a field survey
25 or within 90 days after completion of a field survey, whichever occurs first.

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27 “(e) Any record of survey filed with the county surveyor shall, after being examined by
28 him or her, be filed with the county recorder. . . .”

1 of investigating complaints and making findings thereon under Section 8780 of the Code.

2 “(a) Compliance with Laws Applicable to a Project:

3 A licensee shall provide professional services for a project in a manner that is consistent with the
4 laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain
5 and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers,
6 professional land surveyors, and other qualified persons) as to the intent and meaning of such
7 laws, codes, and regulations.

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9 “(c) Representations:

10 “(1) A licensee shall not misrepresent his or her qualifications to a prospective or
11 existing client or employer.

12 “(2) A licensee shall not misrepresent to a prospective or existing client the licensee's
13 scope of responsibility in connection with projects or services for which the licensee is receiving
14 or will receive compensation from that client.

15 “(3) A licensee shall not misrepresent his or her scope of responsibility in connection
16 with projects or services for which the licensee is claiming credit.

17 “(4) A licensee shall not misrepresent nor permit the misrepresentation of his or her
18 professional qualifications, or affiliations or the affiliations or purposes of the institutions,
19 organizations, or other businesses with which he or she is associated.

20 “(5) When providing information in connection with a person's application for a
21 license to practice professional land surveying, a licensee shall accurately represent his or her
22 knowledge of the applicant's qualifications.

23 “(6) A licensee may advertise or solicit for any services for which he or she is
24 authorized by licensure.

25 “(7) A licensee shall only express professional opinions that have a basis in fact or
26 experience or accepted land surveying principles.

27 “(8) A licensee shall attribute proper credit to others for their professional work or
28 professional contribution and shall not misappropriate the professional work of others.

1 “(9) A licensee shall not knowingly permit the publication or use of his or her data,
2 reports, maps, or other professional documents for unlawful purposes.

3 “(10) A licensee shall not falsely or maliciously injure or attempt to injure the reputation
4 or business of others.

5 “(11) A licensee shall not misrepresent data and/or its relative significance in any
6 professional land surveying report. . . .”

7 **COST RECOVERY**

8 10. Section 125.3 provides, in pertinent part, that the board may request the
9 administrative law judge to direct a licensee found to have committed a violation or violations
10 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **BEATRICE SURVEY**

13 11. Respondent performed a land survey on June 20, 2004 (Beatrice Survey), of the
14 common boundary between Lots 415 & 416 as shown on Tract map No. 8539, dated May 1924,
15 recorded in the County of Los Angeles. The physical address of the property surveyed by
16 Respondent was 11818 Beatrice Street in Culver City, California. The owner of this property is
17 Robert Salcedo.

18 a. The lots mentioned are just two (2) of many lots simultaneously created by the
19 aforementioned Tract map. A review of the recorded Tract Map fails to reveal any notations for
20 identification of original record monuments marking the lot corners.

21 b. The Respondent based his survey upon centerline ties obtained from the City
22 Engineer Field Notes, Field Book 105-165, Pages 116-117 & 121-122. These centerline ties
23 reference the centerline intersections of Mesmer Avenue; Beatrice Street; Margaret Avenue; and
24 Juniette Street, which surround the block where Lots 415 & 416 resides.

25 c. The Subject Surveyor filed a Corner Record (Document Number 787) with the
26 County of Los Angeles Surveyor's Office on October 20, 2005.

27 d. City Engineers field notes indicate a measured distance along centerline of the
28 respective streets that differ from record centerline calculated from the Tract Map.

1 FIRST CAUSE FOR DISCIPLINE

2 (Negligence/Incompetence)

3 12. Respondent is subject to disciplinary action under section 8780, subdivision (b),
4 in that for the Beatrice Survey, Respondent was negligent and/or incompetent in the practice of
5 professional land surveying. The circumstances are as follows:

6 a. Upon commencement of this survey, Respondent failed and was negligent and or
7 incompetent in properly and accurately assessing the subject boundary line with respect to
8 neighboring boundaries and physical occupation evidence (fences, driveways, improvements,
9 etc.). A proper survey of the block revealed more evidence of occupation that would impact the
10 proper determination of the rear boundary for the common boundary in question.

11 b. Respondent was negligent and/or incompetent by failing to apply proportionate
12 measurement along the centerline of Beatrice Street to the intersection with the northwesterly
13 prolongation of the common boundary line. Based on the measurements depicted on the filed
14 Corner Record and the City Engineer Field notes in relation to the original subdivision, the
15 Respondent should have proportionately measured 530.07' along the centerline to establish the
16 intersection.

17 c. Based on the depicted centerline measurements as shown on the filed Corner
18 Record and per the standard of practice, Respondent was negligent and/or incompetent in
19 establishing the proportioned rear lot corner to determine the direction and distance along the
20 common boundary between the proportioned front lot corner and the proportioned rear lot corner.

21 d. The Respondent was negligent and/or incompetent in failing to identifying the
22 found witness monument at the Northeast corner of Lot 416 as follows:

23 (1) There exists two separate monuments, tagged "LS 6961" at this location, less than
24 0.10' apart in an east-west direction. Respondent noted only one monument with incorrect tag
25 referenced ("LS 1969").

26 (2) The Respondent should have established the direction and the distance of the
27 common boundary between the proportioned front lot corner and the proportioned rear lot corner,
28 as mentioned above, per the standard of practice. Annotation on the filed Corner Record depicts

1 two (2) differing dimensions along the common boundary that conflict as to where the
2 Respondent actually established the rear lot corner.

3 (3) Fields visit and inspection of this location failed to reveal any evidence of a
4 monument being set on the wall face, on the 11824 Beatrice St. (Lot 416) side of the previously
5 mentioned wood fence.

6 e. The Respondent was negligent and/or incompetent in discharging professional
7 obligations by:

8 (1) Failure to submit to the local governing agency, the appropriate public survey
9 record within the time frame stated in California Code of Regulations, title 16, section 464(c).

10 (2) Failure to properly reestablish the common lot line and monuments in accordance
11 with standard practice.

12 Complainant refers to and by this reference incorporates the allegations set forth above in
13 paragraph 11, subparagraphs a - d, inclusive, as though set forth fully.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud, Deceit and Misrepresentation)**

16 13. Respondent is subject to disciplinary action under section 8780, subdivision (a), in
17 that for the Beatrice Survey, Respondent engaged in fraud, deceit and misrepresentation in the
18 practice of professional land surveying. The circumstances are as follows:

19 a. Respondent engaged in fraud, deceit and misrepresentation in identifying the
20 found witness monument at the Northeast corner of Lot 416 as follows:

21 (1) There exists two (2) separate monuments, tagged "LS 6961" at this location, less
22 than 0.10' apart in an east-west direction. Respondent noted only one monument with incorrect
23 tag referenced ("LS 1969").

24 (2) Respondent should have established the direction and the distance of the common
25 boundary between the proportioned front lot corner and the proportioned rear lot corner, as
26 mentioned above, per the standard of practice. Annotation on the filed Corner Record depicts 2
27 differing dimensions along the common boundary that conflict as to where the Respondent
28 actually established the rear lot corner.

1 (3) Fields visit and inspection of this location failed to reveal any evidence of a
2 monument being set on the wall face, on the 11824 Beatrice St. (Lot 416) side of the previously
3 mentioned wood fence.

4 b. Respondent engaged in fraud, deceit and misrepresentation by submitting to local
5 governing agency a false public survey and by establishing a false, common lot line and
6 monuments in violation with standard practice.

7 Complainant refers to and by this reference incorporates the allegations set forth above in
8 paragraphs 11 - 12, inclusive, as though set forth fully.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct/Provision Violations)**

11 14. Respondent is subject to disciplinary action under section 8780, subdivisions (d)
12 and / or (h), on the grounds of unprofessional conduct, in that on the Beatrice Survey,
13 Respondent violated one or more other provisions of this charter or of any other law relating to or
14 involving the practice of land surveying of professional land surveying, as follows:

15 a. Respondent failed to file record of survey, violating Section 8762;

16 b. Respondent failed to properly reestablish the common lot line and monuments in
17 accordance with standard practice, violating Section 8762;

18 c. Respondent failed to file a corner record, violating California Code of
19 Regulations, title 16, section 464, subdivision (c);

20 d. Respondent failed to timely submit to the local governing agency, the appropriate
21 public survey record, violating California Code of Regulations, title 16, section 464, subdivision
22 (c); and

23 e. Respondent misrepresented a survey, violating California Code of Regulations,
24 title 16, section 476, subdivision (a)(c).

25 Complainant refers to and by this reference incorporates the allegations set forth above in
26 paragraphs 11 - 13, inclusive, as though set forth fully.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct/Provision Violations)**

3 17. Respondent is subject to disciplinary action under section 8780, subdivisions (d)
4 and / or (h), on the grounds of unprofessional conduct, in that on the Marco Place Survey,
5 Respondent violated provisions of this charter or any other law relating to or involving the
6 practice of land surveying of professional land surveying, as follows:

7 a. Respondent's "Work Order Agreement" failed to describe the procedure or
8 method Respondent and McCunn would use to accommodate additional services, e.g. additional
9 services' hourly rates or fixed fees, and the means to request additional services via "work order"
10 or other forms of authorization by the client, violating section 8759, subdivision (a)(4); and

11 b. Respondent's "Work Order Agreement" failed to include contract termination
12 terms, violating section 8759, subdivision (a)(5).

13 Complainant refers to and by this reference incorporates the allegations set forth above in
14 paragraph 15, inclusive, as though set forth fully.

15 **DISCIPLINE CONSIDERATIONS**

16 18. To determine the degree of discipline, Complainant alleges that on or about
17 July 31, 2000, the Board issued Citation No. 5048-L to Respondent for violating sections 8762,
18 8765(d), and 8772. The Board ordered Respondent to file an appropriate map (record of survey
19 or corner record) within 90 days, tag any monuments set with his land surveyor's license number,
20 and pay a \$500 administrative fine. The citation is complete and final, and incorporated herein
21 by reference as though set forth fully.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Board issue a decision:

25 A. Revoking or suspending Land Surveyor License No. L 4170 issued to
26 Respondent;

27 B. Ordering Respondent to pay the Board the reasonable costs of
28 the investigation and enforcement of this case, pursuant to section 125.3; and

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C. Taking such other and further action as deemed necessary and proper.

DATED: 11/25/09

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
State of California
Complainant

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